



POLICE DEPARTMENT CITY OF NEW YORK

August 16, 2016

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Clint Franklin  
Tax Registry No. 903964  
94<sup>th</sup> Detective Squad  
Disciplinary Case No. 2015-13742

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**Charges and Specifications:**

1. Said Sergeant Clint Franklin, assigned to the 94<sup>th</sup> Detective Squad, while off-duty, on or about June 3, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant Franklin engaged in a physical altercation with his wife, Person A.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED  
CONDUCT – GENERAL REGULATIONS

**Appearances:**

For the Department: Scott Rosenberg, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Matthew Schieffer, Esq.  
The Quinn Law Firm  
Crosswest Office Center  
399 Knollwood Road – Suite 220  
White Plains, NY 10603

**Hearing Date:**

May 26, 2016

**Decision:**

Not Guilty

**Trial Commissioner:**

ADCT Paul M. Gamble

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 26, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Person A and Sergeant Benjamin Almonte as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

## FINDINGS AND ANALYSIS

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1<sup>st</sup> Dep't 1994]).

In this case, the findings will turn largely on the credibility of witnesses. Respondent petitioned for a dissolution of his marriage to Person A in August [REDACTED]. At the time of the filing, Respondent and Person A had one minor child. Since that time, Respondent and Person A's relationship has been acrimonious. During this period of time, while continuing to cohabitate, both parties have leveled accusations of infidelity against each other. Subsequent to the filing of the divorce action, [REDACTED] [REDACTED]. As of the date of this trial, no final divorce decree has been issued. In addition, no final judgment with respect to the custody of the minor children has been



rendered. As such, each party has an incentive to present their testimony in a manner which may affect their respective interests in unadjudicated issues beyond the jurisdiction of this tribunal.

The following is a summary of the undisputed facts in this case.

On June 3, 2015, at approximately 1230 hours, Respondent had just picked up Person A from [REDACTED], and was driving back to their home located in [REDACTED], with their three year-old son. Shortly after their arrival, a physical altercation ensued between Respondent and Person A in the presence of their son, the circumstances and resultant injuries of which are in dispute. Both Respondent and Person A placed separate calls to "911" indicating they had been assaulted by each other, audio recordings of which were entered into evidence at trial (T. 22, 98; Court Ex. 1). [REDACTED] an order of protection was issued in favor of Respondent precluding Person A from any further contact with him (T. 22, 41, 98).

The issue in this case is whether Respondent engaged in a physical altercation with Person A to the prejudice of good order, efficiency and discipline in this Department.

The following is a summary of the disputed facts in this case.

Person A testified at trial that when they returned to their home, Respondent took their son from the car and went inside (T. 17). Person A was under the impression that Respondent would return outside to give her the car keys so that she could pick up their infant daughter, who was staying with a friend (T. 17-18). She explained that she wanted to take their son with her to pick up their daughter because she was aware that Respondent was scheduled to work that evening, and she did not want to have to rush back from the friend's home before Respondent's eventual departure (T. 18).



After waiting unsuccessfully for the Respondent's return, Person A went into the house, picked up the car keys and started to lead their son toward the front door. As she did so, Respondent, "snatched him up" (T. 19). When she tried to take their son boy back from Respondent, he pushed her away. She admitted to punching Respondent as she tried to "wrestle [her] son from him" (Id.). According to Person A, Respondent then punched her in the nose and pushed her up against the kitchen sink, causing her to feel trapped. In an effort to break free from his grip, she bit Respondent's arm and eventually fell to the floor (T. 20-21). Person A testified that after Respondent punched her in the nose, she instantly felt a "snap" and "sharp intense pain," which made it difficult to breathe (T. 21). Despite the pain, she testified that she was focused on the welfare of her son (Id.).

Person A called "911" after the incident and stated that she had been punched by Respondent (T. 22; Court Ex. 1). When the 911 operator asked her if she had been injured, she replied "no" (T. 29). After Person A completed her call, she left her home but returned approximately twenty minutes later. Upon her return, she was examined by an Emergency Medical Technician ("EMT") who had responded to the location. According to Person A, the EMT informed her that her nose looked like it had been fractured because it was "visibly twisted" (T. 23). Person A declined to be transported to the hospital (T. 48).

Person A then went to the [REDACTED] Precinct, where Sergeant Benjamin Almonte took photographs of her nose (T. 31; Respondent's Ex. A-B). At trial, Person A described her nose in the photographs as "swollen, bruised, and twisted" (T. 31). She explained that she had attempted to receive treatment for her nose two to three days after the incident, but the emergency room was crowded and she did not want to wait and be away from her children for too long (T. 52).



According to Person A on June 10, 2015, she went to the emergency room at [REDACTED] Hospital to seek treatment for her nose (T. 24). After an MRI revealed that her nose was fractured, it was reset under local anesthesia at the hospital (T. 24-25). Person A acknowledged that in 2012, she suffered a hairline fracture to her nose during a physical altercation with Respondent's then-girlfriend (T. 23, 34). A photograph of her bloody nose following that altercation was entered into evidence at trial (Respondent's Ex. C). Although Person A testified that she had medical records to support her testimony, no such records were offered in evidence by the Department.

Respondent testified that after he picked up Person A he planned to take their son to the park before reporting for his scheduled tour of duty at 1600 hours (T. 91). Once Respondent returned home, he began to get his son ready for the park when Person A entered the home, grabbed the boy's arm, and pulled him "like a rag doll," while saying, "you're coming with me" (T. 92). According to Respondent, his son apparently did not want to go with Person A, broke free from her grip and ran towards him. Respondent picked his son up and held him in his arms. Person A then began trying to pull their son out of Respondent's arms (T. 92-93).

While holding the car keys, Person A began throwing punches at Respondent. In an effort to protect his son, Respondent tried to cover him as much as possible and shoved or "gently nudged" Person A in the shoulder/upper chest area with his free hand, causing her to fall backwards towards the kitchen sink (T. 94-95). Person A continued to hit Respondent numerous times. As he tried to step back and move away from her into the hallway, she continued to move toward him as he held their son. Respondent then pushed her more forcefully, causing her to fall to the ground (T. 97). He ran into the bedroom, locked the door and called "911" (T. 98). During the call to the emergency operator, Respondent requested that a



patrol supervisor respond to the location because he was a Member of the Service (Court Ex. 1). Person A left the house and Respondent waited for the police to arrive (T. 99).

After an initial investigation, the responding officers left Respondent's residence and directed Respondent to meet them at the [REDACTED] Precinct once he made arrangements for the care of his son (T. 107). Approximately one hour and twenty minutes after she left, Person A returned home with their infant daughter (T. 108). Shortly after she returned, officers again responded to the scene and both Respondent and Person A were taken to the [REDACTED] Precinct where photographs of their injuries were taken by investigators (T. 105, 109). As a result of the incident, Respondent suffered a swollen upper lip, a scalp laceration, and a laceration to his left arm, where a scar remains (T. 103; Respondent's Ex. E-G). Additionally, he testified that the glasses he had been wearing at the time of the incident were damaged (T. 100-102; Respondent's Ex. D).

Sergeant Benjamin Almonte was assigned to the Patrol Borough [REDACTED] Investigations Unit at the time of the incident. He responded to the [REDACTED] Precinct and conducted an investigation regarding the altercation (T. 66, 70). Sergeant Almonte testified that Person A was "visibly upset" and complained of pain in her nose (T. 71). He took photographs of her face and recalled what he described as a "red mark," on her nose, though it was neither swollen nor bleeding (T. 71, 75; Respondent's Ex. A-B). When Person A was asked if she wanted to be transported to the hospital, she declined (T. 75). He recalled that Respondent presented with a number of injuries, including what appeared to be a bite mark on his left arm, small abrasions on the top of his head approximately one inch in size, and a swollen upper lip (T. 71-73).



Sergeant Almonte testified that during the course of his career, he has encountered multiple instances where an individual has suffered a broken nose (T. 77). On those occasions, he recalled that the injured individual was often bleeding "profusely" from their nose, suffered immediate swelling of the area, and appeared to be in a tremendous amount of pain (T. 78-79). In Person A's case, though she complained of pain in her nose, she appeared to be "extremely calm" (T. 79).

Respondent categorically denied punching Person A during the course of the physical altercation, asserting that he only pushed her away several times, despite being punched in his face and being gouged by a sharp instrument. For the reasons set forth below, I credit his testimony. I find Respondent's testimony logical and consistent with the other evidence in the case. I further find that in the immediate aftermath of the altercation, his request for a patrol supervisor and his self-identification as a police officer evidenced his awareness of the gravity of the situation he faced and his obligation under the Patrol Guide to provide truthful information. I make the foregoing findings based upon: (1) the absence of medical records or expert testimony regarding the injuries allegedly suffered by Person A on June 3, 2015; (2) the reasonableness of his testimony; (3) the corroboration of his testimony as related to injuries he suffered during the altercation; and (4) the inherent implausibility of portions of Person A's testimony.

Respondent's Exhibits D, E, F, and G in evidence are photographs Sergeant Almonte took of Respondent after the incident at his home. Respondent's Exhibit D depicts a pair of glasses Respondent wore during the altercation which appear to be bent. Respondent's Exhibit E depicts a laceration to Respondent's scalp. Respondent's Exhibit F depicts an abrasion to Respondent's left upper lip, as well as an area of swelling around the abrasion. Finally, Respondent's Exhibit G depicts an abrasion to Respondent's upper right arm. Respondent



displayed to the tribunal an area of scarring on his upper left arm which appears to be consistent with the injury depicted in Respondent's Exhibit G. These photographs, as well Respondent's courtroom display of his scarred arm, appear to strongly corroborate Respondent's testimony regarding the physical injuries allegedly inflicted upon him by Person A.

The tribunal also notes that Respondent admits to being 6'3" tall and weighing approximately 235 pounds at the time of the incident. Based upon his stature, it is probable that had he actually punched Person A as she testified, she would have suffered more serious injuries than what is depicted in the photographs comprising Respondent's Exhibits A, B and C. That Person A displayed no indicia of such a blow is not dispositive of the issue but weighs against her credibility.

Respondent's Exhibits A and B in evidence are photographs Sergeant Almonte took of Person A shortly after the incident at her home. According to Person A, Respondent's Exhibit C is a photograph of her face she took after an incident in 2013 in which she allegedly sustained a hairline fracture of her nose at the hands of Respondent's purported girlfriend. In the view of the tribunal, in the absence of expert medical testimony, any attempt to render findings of fact regarding the significance, if any, in any perceived differences between Person A's visage, as depicted in Respondent's Exhibits A, B and C, would be based on speculation.

I further find Person A to be an unreliable witness based upon: (1) the inconsistency between her in-court testimony that she suffered a broken nose due to a punch from Respondent and her declaration to the 911 operator that she was not injured; (2) her refusal of medical treatment on two occasions shortly after the altercation; (3) her testimonial assertion that she possessed supportive medical records without a concomitant proffer to the court of the same documents; and (4) the implausibility of someone who sustained a broken nose waiting seven



days to obtain medical treatment. Based upon the foregoing, I further find Person A embellished her testimony to exaggerate the severity of her injuries. Person A's status as an attorney makes it unlikely that either the shortcomings in her testimony or her failure to produce medical records were the result of an innocent mistake by a layperson who fails to appreciate their import.

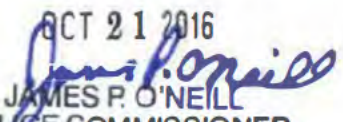
Accordingly, I find Respondent Not Guilty of the charged misconduct. I further recommend that the 32 days previously served on pre-trial suspension be restored to Respondent.

Respectfully submitted,



Paul M. Gamble  
Assistant Deputy Commissioner Trials

**APPROVED**

OCT 21 2016  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER